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No. 1173

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

HARLEY D. JONES,

Plaintiff-Appellant,

vs.

STATE OF ILLINOIS BY ITS ELECTORAL BOARD,

Defendant-Appellee.

(On appeal from the Supreme Court of Illinois)

PLAINTIFF-APPELLANT'S MOTION IN OPPOSITION TO DEFENDANT-APPELLEE ILLINOIS' MOTION TO DISMISS

HARLEY D. JONES, Pro Se.
Suite 1627
11 S. La Salle Street
Chicago, Illinois 60603

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

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ARGUMENT I

Although, the defendant, State of Illinois files a Motion to Dismiss in form, it presents no legal grounds for the

dismissal of this cause, for it cites no law cases or statutes in support thereof, except some hypothetical assumptions which did not happen, or could not have happened because of flaws in their assumptions, legal conclusions of the defendant, Illinois, and the fact that there was arguments in Case No. 620 covering 2 out of 3 points in the present cause which at the present time is under advisement by this Court.

Briefly, the flaws of the defendant, Illinois assumptions are that William G. Clark would not have been picked by any 50 of the Democratic Organization to run as an Independent candidate for Governor because of party discipline, or could Mr. Altorfer have secured 25,000 signatures from his home county of Peoria, as an independent candidate for Governor, for he would have run afoul of Article 10-2 and 10-3 of the Election Code of Illinois which requires that 200 signatures be obtained from 50 counties and the total of 25,000 signatures must be under 10-4 obtained from those who did not vote in the previous primary.

ARGUMENT II

The three (3) questions or issues in the Jurisdictional Statement in this cause presents a totality or pattern of Defendant Illinois' highly restrictive provisions which under its Election Code Article 10, Sections 2-3-4, Article 7, Section 14 requiring 25,000 elector's signatures, where the major party candidates require only 5,000, while an independent candidate in a state-wide office must have included in his count 200 signatures from each of 50 counties, plus the fact that electors who voted in the primary are barred from under 10-4 to sign, plus the inclusion of the Republican and Democratic State Chairman on the Electoral Board (7-14) sharing sovereign powers with the

Executive branch of the State government, and also, plus the lock-in of the major party voters so that they cannot change parties for 23 months. This is party rule by STATE ACTION.

This Court stated in *Gray* v. *Sanders*, 372 U.S. 368 (1963) at page 374 (Jurisdictional statement page 21):

> "Judge Sibley in *Chapman* v. *King*, 154 2nd 460, showed with meticulous detail the manner in which Georgia regulates the conduct of party primaries id. pp. 463-464 and he concluded: 'we think these provisions show that the State, through the managers it requires, collaborates in the conduct of the primary, and it puts its power behind the rules of the party. It adopts the primary as a part of the public election machinery. The exclusions of voters made by the primary rules becomes exclusions enforced by the State.'" id. p. 464.

Plaintiff, Jones's reply to the defendant, State of Illinois' assertion on page 4 of their motion "that the provisions of the Electoral Code under attack in this case and in the case of *Moore* v. *Shapiro, supra,* is reasonable and essential to the fair operation of the Republican form of government in the State of Illinois." Does that make Wisconsin government less Republican? Wisconsin boasts that they are more Republican, for they have both the Republican and Democratic parties on the same ballot. This permits Wisconsin primary voters to pick the best candidates from both parties. Or is the defendant, State of Illinois really arguing that new ideas should be stifled so that the Colonist's proud boast imprinted on every dollar bill in the United States should, also, of necessity, be stifled. The unfinished pyramid symbolizes the Republic which will ever be in the building under the all-seeing eye of providence under the Colonist's proud boast of Novus Ordo Seclorum (A New Order for the Ages).

Perhaps, the interest of this nation would be best served if there was an unrestricted flow of ideas to the political arena without the restrictive defense in depth imposed on the primary electors through the major parties control of all the legislatures of the country. The major parties should have no fear on that score, as the last election gave the American Party 10 million votes, which, hardly put a dent into the armor of the two major parties.

Economically speaking, our country became great with its law of freedom of contract. Our gross national product stands at 885 billion dollars. Should it be less than free in the political arena? We had no primary restrictions in the early days of the Constitution. There was no lock-in of voters in the primary, or barring of primary voter from later changing his mind to sign an independent candidate's petition.

This court will take judicial notice of the fact that the primary vote percentage in each Illinois primary has declined at every primary election, for the reason the business man, professional man, and our great middle class refuses to declare their party choice on separate ballots. They fear reprisals by a declaration. On the other hand, Wisconsin, with all the parties on the same ballot enjoys an increase in primary turn-out percentage at each election.

Mr. Justice Black of this Court in *Williams* v. *Rhodes*, decided October 15, 1968, 89 Sup. Ct. 5 at page 10 stated:

> "But we have, also, held many times invidious distinctions cannot be enacted without a violation of the Equal Protection Clause. In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances of the law, the interests claims to be protecting, and interests

> of those who are disadvantaged by the classification. Similarly, we have said with reference to the right to vote: 'No right is more precious in a free country than that of having a voice in election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined'." (page 20 of the Jurisdictional Statement.)

Mr. Justice Black in delivering the Opinion of this Court, further stated on page 11 ibid:

> "There is, of course, no way two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of our First Amendment freedoms."

This Court in March of 1969, in all probability, had some misgivings as to the workings of the various State and County electoral boards exclusions of candidates from election ballots, for it ordered a new election in one of the states when 7 candidates were excluded from the ballot.

Let us examine the Defendant's State of Illinois Electoral Board procedural merry-go-round as found in its own minutes. (Record page 45, docketed in this cause). This in reference to the independent candidacy of Melvin Jones in the 20th Congressional District in Illinois. Mr. Melvin Jones states on page 45 of the Record:

> "And yet when you come to the other Federal Office, which is a Representative in a District office, I am representing only one District out of twenty-four. I have about one twenty-fourth of the total population. There is only 227,000 registered voters, and yet I am not allowed to get one-half of one per cent. I have to get five per cent which is ten times.

Mr. Howlett: Pardon me, Mr. Jones. That is true. But the place for you to get that straightened out is in the Legislature and the Courts. We have no authority whatsoever to change the law here in the Electoral Board. All we can do is follow the law, as we have in the Socialist Party, and as we have in the case of George Wallace. There is plenty of opportunities for independents to run for public office in Illinois, but everybody has to follow the rules and regulations that have been set up by the Legislative bodies that represent the people of this state. * * * "

(Page 47 of the Record):

"Mr. Jones: The Democratic candidate had to get 389 signatures on his Petition. The Republican had to get 465 to get on the ballot, and the independent had to get 8500, which is, again, about 16 times as much."

(Page 51 of the Record):

"Governor Shapiro: Mr. Jones and gentlemen of the Electoral Board: The petition filed in the Office of the Secretary of State contains 2827 signatures. The Illinois Law which binds the Electoral Board until either the Law is changed, and then that law would bind the Board, but at the present time, the Law requires a minimum of 8535 number of signatures as a minimum, and 13,656 as a maximum. The petition shows 2827. It appears on the surface that the Petition does not conform with the Illinois law."

Is not the above quoted minutes of the meeting of the Illinois State Electoral Board a true reflection of the Pandora primary election box in the State of Illinois?

WHEREFORE, it is urged that this Court, for the reasons above stated deny the Defendant State of Illinois's Motion to Dismiss, note probable jurisdiction, hear this cause, reverse the defendant's State Electoral Board's decision as to this plaintiff, Harley D. Jones, and order a new election for the Office of Lieutenant-Governor of Illinois.

Respectfully submitted,

HARLEY D. JONES, *Pro Se*
WALTER F. CEBELIN,
Attorneys for Plaintiff-Appellant.